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 ABELMAN, FRAYNE AND SCHWAB
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In re Application of :
 Hargreaves et al. :
 Application No.: 10/589,596 :
 PCT No.: PCT/NL2005/000111 :
 Int. Filing Date: 16 February 2005 :
 Priority Date: 17 February 2004 :
 Attorney Docket No.: 207,685 :
 For: Laminated Dough Products And The Use Of Protease :
 At The Outer Surface To Improve Crispness Thereof After...:

DECISION

This is with regard to the renewed petition under 37 CFR 1.181 filed on 21 January 2009.

DISCUSSION

In a Decision mailed on 05 January 2009, the petition to withdraw the holding of abandonment filed on 27 October 2008 was dismissed, without prejudice, because

Regarding requirement (2), petitioner does not explicitly state that a search of the file jacket and docket records indicates that the Office action was not received. Petitioner has provided a "Declaration by Mary Washburn...", who states in part that "there has been no entry of a Notification of Missing Requirements of February 4, 2008 or any other date in AFS: 207,685, which is U.S. Patent Application No. 10/589,596." She also refers to "a photocopy of the jacket for Docket No. 207,685 which indicates there is no entry of a Notification of Missing Requirements for February 4, 2008."

Concerning requirement (3), petitioner provides copies of docket records showing applications docketed for response between 03 May 2008 and 05 May 2008, three months after the 04 February 2008 mailing date of the Notification. However, the Notification set a two-month period for response; therefore, the non-extended period for response ended on 04 April 2008. Accordingly, the required docket records are those records showing all applications docketed for response on (or about) 04 April 2008. In the absence of such records, it would not be appropriate to conclude that requirement (3) has been satisfied at this time.

In response, petitioner has submitted "Remarks" signed by Ms. Washburn, who explicitly states that she "conducted a search of the file jacket and determined that the Notification of Missing Requirements of 4 February 2008 was not received." However, neither counsel nor Ms. Washburn has directly stated that a search of the docket records indicates that the Notification was not received. For this reason, the terms of requirement (2) have not been satisfied.

Regarding requirement (3), Ms. Washburn introduces docket records which she characterizes as "a Docket Report for April 4, 2008 for Abelman Frayne and Schwab showing all

replies docketed for a date two (2) months from the mailing date of 4 February 2008, which is the mailing date of the non-received Office Action." Inspection of the docket records reveals that they pertain to cases whose "Due Date Indicator" is on or about 04 May 2008, rather than 04 April 2008 (note that the records are entitled "Due Date List By Date 28-Apr-2008 To 05-May - 2008"). Since the non-extended due date for a reply to the Notification of Missing Requirements mailed on 04 February 2008 was 04 April 2008, not 04 May 2008, these records do not satisfy requirement (3).

DECISION

The petition is **DISMISSED**, without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

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